



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1996

Mr. Kevin D. Pagan  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78505-0220

OR96-1131

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40273.

The City of McAllen (the "city") received a request for "any police calls from 7-95 to present" at a particular address, which implicates offense reports involving several juveniles. You assert that the requested information is excepted from required public disclosure under section 51.14(d) of the Texas Family Code, as information made confidential by law. Further, you also inform us that the requested information pertains to a pending criminal investigation. Therefore, you assert that the requested information is excepted from required public disclosure based on section 552.108 of the Government Code.

The release of law enforcement records of offenses committed by a juvenile before January 1, 1996 is governed by former Family Code section 51.14(d),<sup>1</sup> which provides, in pertinent part:

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<sup>1</sup>The Family Code was substantially amended by the Seventy-fourth Legislature including the repeal of section 51.14. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the amendments to the Family Code apply only to conduct that occurs on or after January 1, 1996. *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. "Conduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* The requested information concerns conduct that occurred both before and after January 1, 1996, therefore we will address how the disclosure of the requested information is affected by the change in the law. See generally Open Records Decision No. 0644 (1996).

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.<sup>2</sup>

Law enforcement records concerning conduct that occurred prior to January 1, 1996 are made confidential under former section 51.14 of the Family Code, and, therefore, are excepted from required public disclosure under section 552.101 of the Government Code.<sup>3</sup> In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to "police blotter" and related information). We do not understand any of the exceptions to former section 51.14(d) to apply here.<sup>4</sup> Accordingly, we conclude that the city must withhold the offense reports filed before January 1, 1996 under section 552.101 as information deemed confidential by law, pursuant to Family Code section 51.14(d). However, this section was repealed by the Seventy-fourth Legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. The Seventy-fourth Legislature replaced section 51.14(d) concerning juvenile criminal records with section 58.007 of the Family Code.<sup>5</sup>

Section 58.007 appears to track many of the provisions of former section 51.14, but it omits the language in former section 51.14(d) that "law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public." Family Code section 58.007(e) reads as follows:

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<sup>2</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590.

<sup>3</sup>Section 552.101 of the Government Code excepts from required public disclosure information that is "confidential by law," and encompasses information made confidential by statute. This section is one of the specific exceptions to disclosure found in chapter 552 of the Government Code. Chapter 552 generally provides that all information collected, assembled, or maintained by or for a governmental body in connection with official business is public information that is available to the public, unless the information falls within a specific exception to disclosure. *See* Gov't Code §§ 552.002, .021; Open Records Decision No. 565 (1990) at 9-10.

<sup>4</sup>*See id.* § 3, 1993 Tex. Gen. Laws at 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)).

<sup>5</sup>This provision applies only to conduct occurring on or after January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2517, 2591. Conduct that occurred prior to January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose. *Id.*

Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

This office recently construed this provision and concluded that the records of juvenile offenders concerning conduct occurring on or after January 1, 1996, that are held by law enforcement agencies are not made confidential under section 58.007 of the Family Code. *See Open Records Decision No. 0644 (1996) at 4.* While section 58.007 restricts disclosure for records and files of a juvenile court, a clerk of court, a juvenile probation department, and a prosecuting attorney relating to a child, it does not contain a confidentiality provision that restricts access to juvenile law enforcement records and files in the hands of a law enforcement agency. Although section 58.007(e) provides that law enforcement records concerning juveniles "may" be inspected by a juvenile or criminal justice agency, the provision contains no restriction that limits inspection only to these two types of agencies. Consequently, the city may not withhold the offense reports concerning juvenile conduct occurring on or after January 1, 1996 pursuant to Family Code section 58.007 in conjunction with section 552.101 of the Government Code.

However, you also argue that the information at issue is excepted from disclosure under section 552.108 of the Government Code, which may except some of the requested information from disclosure. Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

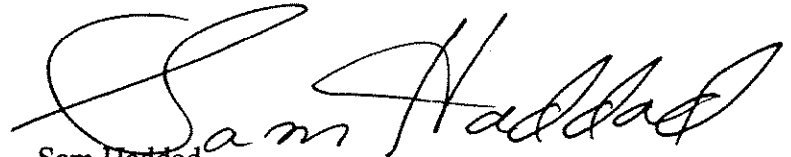
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

We have examined the information at issue and conclude that, with regard to the law enforcement records concerning conduct occurring on or after January 1, 1996, although you may not withhold the reports pursuant to Family Code section 58.007, you may withhold those reports under section 552.108. *See Holmes v. Morales*, 39 Tex. Sup. J. 781, 1996 WL 325601 (June 14, 1996). Therefore, pursuant to section 552.108, you may withhold the requested offense reports irrespective of whether juvenile conduct was involved.

We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>6</sup> *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note that Section 552.108 is discretionary with the governmental entity asserting the exception and, therefore, you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 40273

Enclosures: Open Records Decision No. 0644 (1996)  
Submitted documents

cc: Mr. Stephen C. Ash  
130 East Iris  
McAllen, Texas 78501  
(w/o enclosures)

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<sup>6</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.